In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 749

JOHN J. KELLER, PETITIONER

v.

STATE OF WISCONSIN ex rel. STATE BAR OF WISCONSIN

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

MEMORANDUM FOR THE UNITED STATES

This memorandum is submitted, pursuant to this Court's order of February 17, 1964, inviting the Solicitor General to file a brief:

> * * * expressing the views of the United States on the extent of the authority granted by a license to practice issued by the Interstate Commerce Commission as applied to the activities in this case.

1. Petitioner, who is not a lawyer and has not been licensed to practice law in Wisconsin where he resides, was admitted to practice before the Interstate Com-

merce Commission of the United States, pursuant to Rule 1,8 of the Commission's General Rules of Practice.[1] Petitioner's primary business is the representation of clients engaged in interstate transportation by motor vehicle. He represents such clients before the Commission, as well as before the Public Service Commission and the Motor Vehicle Department of Wisconsin. A "considerable portion" of his activities before the State agencies involves the rendering of professional advice and service connected with his interstate business (Pet. App. 45a-46a).

The Attorney General of Wisconsin brought this action in the name of the State, upon complaint of the State Bar of Wisconsin, praying for a judgment declaring that petitioner has engaged in the unlawful practice of law and for an order that he cease and

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[1] Rule 1.8 of the General Rules of Practice of the Interstate Commerce Commission provides (49 C.F.R. 1.8):

> The following classes of persons whom the Commission finds, upon consideration of their applications, to be of good moral character and to possess the requisite qualifications to represent others may be admitted to practice before the Commission:
>
> (a) *Attorneys at law.* Attorneys at law who are admitted to practice before the highest court of any State or Territory or the District of Columbia.
>
> (b) *Persons not attorneys.* Any person not an attorney at law who is a citizen or resident of the United States and who shall satisfy the Commission that he is possessed of the necessary legal and technical qualifications to enable him to render valuable service before the Commission, and that he is otherwise competent to advise and assist in the presentation of matters before the Commission.

desist from such activities (Pet. App. 37a-42a). Petitioner answered, admitting the basic facts, and raising as an affirmative defense his license to practice before the Interstate Commerce Commission (Pet. App. 42a-46a). The case was submitted on the State's demurrer to his answer and his motion for summary judgment (Pet. App. 46a-51a).

The Supreme Court of Wisconsin sustained the position of the State Attorney General, and broadly enjoined petitioner from engaging in what it described as the unauthorized practice of law, 16 Wis. 2d 377, 114 N.W. 2d 796, 116 N.W. 2d 141 (Pet. App. 10a-23a). Following the decision in *Sperry* v. *Florida*, 373 U.S. 379, this Court issued the following order on petitioner's first petition for a writ of certiorari (374 U.S. 102):

> The petition for writ of certiorari is granted, the judgment is vacated and the case remanded to the Supreme Court of Wisconsin for reconsideration in light of *Sperry* v. *Florida ex rel. Florida Bar*, 373 U.S. 379.

On remand, the Supreme Court of Wisconsin ruled (21 Wis. 2d 100, 123 N.W. 2d 905, Pet. App. 3a-8a):

(1) Petitioner is entitled to represent others at hearings of the Interstate Commerce Commission held in Wisconsin, to prepare "applications to the Interstate Commerce Commission and similar documents of a type which would, in matters before that commission, be counterparts of pleadings in matters before a court," and to advise clients in Wisconsin "as to the impact upon their matters of the federal law and reg-

ulations which would govern the Interstate Commerce Commission in hearing and deciding such matters" (Pet. App. 6a);

(2) Petitioner's authorization to practice before the Interstate Commerce Commission does not authorize him to represent others in proceedings before the Public Service Commission of Wisconsin (Pet. App. 7a);

(3) The drafting of leases and contracts which must be approved by the Interstate Commerce Commission, and the rendering of advice "concerning their significance other than their standing under the interstate commerce laws and regulations would constitute the practice of law outside the scope of his practice before the Interstate Commerce Commission" (Pet. App. 7a).

2. In our view, the authority granted by the Interstate Commerce Commission to practitioners under its present rules of practice does not exceed that accorded to petitioner by virtue of the second decision of the Supreme Court of Wisconsin in this case. As that court recognized, the right to practice before the Commission includes not only the right to make actual appearances before the Commission, but also the authority to give advice and counsel as to matters which are or may be before the Commission, and prepare applications and other papers for use in submitting matters to the Commission (Pet. App. 7a-8a).

We also agree that the admission to practice before the Commission, under the present rules of practice, does not confer upon the holder of such a license the right to practice before State regulatory agencies, even

in regard to matters concerning interstate transportation (Pet. App. 6a-7a).

Lastly, we believe that the admission to practice before the Commission neither authorizes nor prohibits the drafting of contracts and leases which require its approval. Accordingly, in our view, the issue of whether the drafting of such documents constitutes the unauthorized practice of law is a matter for resolution between the States and the persons drafting the documents.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

ROBERT W. GINNANE,
General Counsel,
Interstate Commerce Commission.

MAY 1964.

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